

[CHAPTER 138]

ENHANCED 911 SERVICES

WHEREAS, PUBLIC LAW 110-283; NEW AND EMERGING TECHNOLOGIES 911 IMPROVEMENT ACT OF 2008 became law on July 23, 2008;

WHEREAS, PUBLIC LAW 110-283; NEW AND EMERGING TECHNOLOGIES 911 IMPROVEMENT ACT OF 2008 facilitates the rapid deployment of IP-enabled 911 and E-911 services, encourages the Nation's transition to a national IP-enabled emergency network, and improve 911 and E-911 access to those with disabilities;

WHEREAS, the State of Hawaii is only one of six states that does not have a single entity that coordinates all enhanced 911 services;

WHEREAS, there is currently only one state board, the wireless enhanced 911 board, that administers enhanced 911 services in the State of Hawaii

WHEREAS, the technologies involved in providing enhanced 911 services have converged to a point that systems required to provide such service are blended;

WHEREAS, enhanced 911 systems are evolving to accept other forms of communications such as text, video and Telematics data;

WHEREAS, the current surcharges for wireline and wireless enhanced 911 service does not account for prepaid wireless connections, or future technologies such as broadband service or IP-enabled services;

WHEREAS, the current wireless enhanced 911 board does not include representation of other communications service providers;

THEREFORE; in the interest of the safety of the public and visitors to Hawaii, the following legislation is proposed to address the need for a single state entity to administer enhanced 911 services for the State of Hawaii.

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[§(~~138~~)xxx-1] Definitions

As used in this chapter, unless the context requires otherwise:

"9-1-1" means the digits, address, Internet Protocol address, or other information used to access or initiate a call to a public safety answering point.

"9-1-1 Coordinator" means the person designated to carry out the responsibilities of coordinating 9-1-1 services as required in Section 3(b) of Wireless Telecommunications Act of 1999 (9-1-1 Act)

"9-1-1 system" means an emergency telephone system that does all of the following:

- a. Enables the user of a voice or data communications service connection to reach a PSAP by dialing 9-1-1.
- b. The voice communications service may be telephone service, computer service, wireless service, or other service which facilitates the placing of calls by persons in need of emergency services to a public safety answering point.

- c. The data communications service may be text message or some other service that transmits data exclusively.
- d. Provides enhanced 911 services.

"Automatic location identification" means an enhanced 911 service capability that enables the automatic display of information indicating the geographic location of the communications device used to place a 911 call.

"Automatic number identification" means an enhanced 911 service capability that enables the automatic display of the ten-digit telephone number or some other unique identifier from which a 911 call is placed

"Board" means the enhanced 911 board established under this chapter.

"Call" means any communication, message, signal, or transmission.

"Communication service" means a service capable of accessing, connecting with, or interfacing with a 9-1-1 system, by dialing, initializing, or otherwise activating the 9-1-1 system by means of a local telephone device, cellular telephone device, wireless communication device, interconnected voice over the internet device, or any other means."

"Communications service connection" means each telephone number assigned to a residential or commercial subscriber by a communications service provider, without regard to technology deployed.

"Communications service provider" means an entity that provides communications service to a subscriber.

"Database service provider" means a service supplier who maintains and supplies or contracts to maintain and supply an ALI database or MSAG.

"Enhanced 911 fund" or "fund" means the statewide special fund established to ensure adequate cost recovery for the deployment of enhanced 911 services in Hawaii
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[~~138~~]xxx-1 Definitions

provided for in PUBLIC LAW 110-283.

"Enhanced 911 service costs" means all capital, nonrecurring, and recurring costs directly related or ancillary to the implementation, operation and administration of enhanced 911 services.

"Prepaid connections" means the sale of a telecommunications service that provides the right to utilize service, as well as, other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

"Proprietary information" means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of enhanced 911 service that are developed, produced, or received internally by a communications service provider or by a provider's employees, directors, officers, or agents.

"Public safety agency" means a functional division of the State or county that provides or has authority to provide, or a private entity contracted by a state or county agency that provides, firefighting, law enforcement, ambulance, medical, or other emergency services.

"Public safety answering point" means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

"Reseller" means a person or entity that purchases communications services from a communications service provider for the purpose of reselling communications service to end-users.

"Telematics" means the blending of computers and wireless telecommunications technologies, ostensibly with the goal of efficiently conveying information over vast networks.

"Universal emergency number service" or "9-1-1 service" means public communications service that provides service

users with the ability to reach a public safety answering point by accessing a "9-1-1 system."

"VoIP provider" means an entity that provides interconnected Voice-over-Internet-Protocol service.

[§xxx-2] Enhanced 911 Board. (a) There is created within the Department of Public Safety, for administrative purposes, an enhanced 911 board consisting of fourteen voting members; provided that the membership shall consist of:

(1) The Director or designee of Public Safety;

(2) The Director or designee of the Hawaii Public Utilities Commission;

(3) The consumer advocate or designee;

(4) The Director or designee of Information and Communications or designee;

(5) 1 representative each from Oahu, Hawaii, Kauai, Maui, and Molokai, that is employed by or manages the respective primary public safety answering point, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law;

(6) 1 representative from the predominant VoIP communications service provider, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;

(7) 3 representatives from the wireless communications service providers, one representative will represent network based carriers, and the other two shall represent GPS based carriers, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;

(8) 1 representative of the predominant Local Exchange Carrier Company in the state, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law;

(c) A simple majority of the voting members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board.

(d) The consumer advocate or designee shall serve as the chairperson of the board and will vote in the event of a tie

(d) The board shall meet upon the call of the chairperson or majority of the board but not less than quarterly.

(e) The members representing communications service providers shall be appointed by the governor for terms of two years.

(f) Each voting member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

(g) The members shall serve without compensation. Members shall be entitled to reimbursements from the enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

(h) 911 Advisory Committee (a) There is created within the enhanced 911 board a 911 advisory committee consisting of ten members; provided that the membership shall consist of:

(1) The Attorney General or designee;

(2) The Director of Homeland Security or designee;

(3) The Civil Defense Director or designee;

(4) 1 representative each from Oahu, Hawaii, Kauai, Maui, and Molokai, that is employed by or manages the Information Technology (IT) or Geographical Information Systems (GIS) infrastructure for the County, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law;

(5) The state comptroller or designee;

(6) The administrator of the state procurement office or designee

(i) Within the Enhanced 9-1-1 Board there will be a person designated as the State 9-1-1 Coordinator as required by Section 3(b) of the federal Wireless Telecommunications and Public Safety Act of 1999(9-1-1 Act), This person will be chosen through nominations of the Hawaii PSAPs to the Board and approved by a vote of the Board. This person will serve at the pleasure of the Board.

(j) The 911 advisory committee members and the state 911 coordinator shall serve without compensation and shall be entitled to reimbursements from the enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

(k) The board has the authority to promulgate, carry out and enforce Rules to carry out the power and duties related to this act

(l) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

(1) Create reports, conduct audits or assessments, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and

(2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support.

(1) The board shall develop reasonable procedures to ensure that all members receive adequate notice of board meetings and information concerning board decisions. [L 2004, c 159, pt of §2; am L 2005, c 49, §1]

[xxx-3]Enhanced 911 fund. There is established outside the state treasury a special fund, to be known as the enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section xxx-4. Moneys paid into the fund are not general fund revenues of the State. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended by the board for the exclusive purposes of ensuring adequate funding for the deployment and sustainment of enhanced 911 services and for expenses of administering the fund. [L 2004, c 159, pt of §2]

[\$xxx-4] Surcharge.

(a) A monthly enhanced 911 surcharge, subject to this chapter, shall be imposed upon each communications service connection.

(b) The effective date of the surcharge shall be July 1, 2010. The rate of the surcharge shall be set at 55 cents per month for each communications service connection. The surcharge shall have uniform application and shall be imposed on each communications service connection operating within the State to ensure parity of protection except connections billed to federal, state, county and municipal government entities.

(c) All communications service providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each communications service connection. The communications service provider or reseller may list the surcharge as a separate line item on each bill. If a communications service provider or reseller receives a partial payment for

a monthly bill from a communications service customer, the communications service provider or reseller shall apply the payment against the amount the customer owes the communications service provider or reseller, before applying the partial payment against the surcharge.

(d) A communications service provider, who has customers who pay for service prospectively, known as prepaid customers, shall remit to the board the surcharge. The communications service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge.

(e) A communications service provider that:

(1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and

(2) Has been requested by a public safety answering point to provide enhanced 911 services in a particular county or counties, may recover enhanced 911 service costs as provided in this chapter.

(f) Each communications service provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(g) A 9-1-1 service provider collecting a fee according to (§269-16.95) , may retain the fee until an audit is conducted by the Board. Should the audit find any cause for either a reduction or increase of the fee, the Board will take action to ensure a fair and reasonable fee consistent with national cost models is allowed and the service provider is still able to provide enhanced 911 services for their customers. (§269-16.95 Emergency telephone service; capital costs; ratemaking is rescinded)

(h) A communications service provider or reseller shall remit to the enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges

collected less amounts retained for administrative expenses incurred by the communications service provider or reseller, as provided in subsection (e).

(i) The surcharges collected by the communications service provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are they considered revenue of the provider or reseller.

(j) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the communications service provider. Communications service providers shall have no liability to remit surcharges that have not been paid by customers. A communications service provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded. The communications service provider will remit to the board a list of accounts which includes name, billing address and uncollected amount for which the surcharge has not been collected on a quarterly basis or some other timeframe as agreed upon by the board.

(l) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

(m) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing enhanced 911 service.

[§xxx-5] Disbursements from the fund.

(a) Each public safety answering point shall be eligible to seek disbursements from the fund solely to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning, or support services required by the public safety answering point to provide technical functionality for the enhanced 911 service.

(b) The board may make purchases and enter into agreements on behalf of one or more public safety answering points to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, database provisioning, and support services required by the public safety answering point to provide and administer technical functionality for the enhanced 911 service.

(c) Each communications service provider of enhanced 911 service may request reimbursement from the fund for reasonable costs incurred for providing enhanced 911 service.

In no event shall a communications service provider be reimbursed for any amount above its actual costs to provide enhanced 911.

[§xxx-6] Report to the legislature.

(a) Within 270 days after the effective date of this act the board shall submit to the legislature a statewide 911 deployment plan, including:

- (1) A timeline for the deployment of a Next Generation 911 IP-enabled network
- (2) A study that details the costs to include equipment, network, support services and staff related to the deployment and ongoing operation of a Next Generation 911 IP-enabled network
- (3) Changes to the surcharge needed to support the funding of a Next Generation 911 IP-enabled network

(b) The board shall submit an annual report to the legislature, including:

- (1) The total aggregate surcharge collected by the State in the last fiscal year;
- (2) The amount of disbursement from the fund;

(3) The recipient of each disbursement and a description of the project for which the money was disbursed;

(4) The conditions, if any, placed by the board on disbursements from the fund;

(5) The planned expenditures from the fund in the next fiscal year; and subsequent four fiscal years

(6) The amount of any unexpended funds carried forward for the next fiscal year;

(7) A cost study for the next fiscal year and subsequent four fiscal years, to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and

(8) A status report on E911 services, including public safety answering points, and communications service providers.

[§xxx-7]Audits. (a) During any period in which an enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and communications service providers, recovers only costs and expenses directly related to the provision of enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each communications service connection is required to be adjusted. The costs of the

audit shall be an administrative cost of the board recoverable from the fund. [L 2004, c 159, pt of §2]

[§xxx-8] Proprietary information. (a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying enhanced 911 services shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting communications service provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting communications service provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual communications service provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a communications service provider. The board shall hold all propriety information in confidence and shall adopt reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other communications service providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the communications service provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the communications service provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the communications service provider representatives. [L 2004, c 159, pt of §2]

[§xxx-9] Limitation of liability. (a) Notwithstanding any law to the contrary, in no event shall any communications service provider, reseller, or their respective employees,

directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and willful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to enhanced 911 or any other communications service intended to help persons obtain emergency assistance. In addition, no communications service provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton and willful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of enhanced 911 service. [L 2004, c 159, pt of §2]

[§xxx-10] Database or location information.

- (a) The data and information contained in the database of the enhanced 911 calling system is the sole property of the state and will be maintained by the communications service provider who is delegated that responsibility by the Board.
- (b) Any communications service location information including GIS information produced by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.
- (c) A person shall not disclose or use, for any purpose other than the enhanced 911 calling system, information contained in the database of the enhanced 911 calling system established pursuant to this chapter.

[§xxx-11] Dispute resolution. (a) Any communications service provider, reseller, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the non-prevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any communications service provider, reseller, or public safety answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof. [L 2004, c 159, pt of §2]

[§ xxx-12] Service contracts. A communications service provider shall not be required to provide enhanced 911 service until the communications service provider and the board or public safety answering point providing enhanced 911 service in the county or counties in which the communications service provider is licensed to provide communications service have entered into a written agreement setting forth the basic terms of service to be provided.